IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.A No. 311 of 2000

Date of Decision: 5.10.2007

State of HP … Appellant

Versus

Relue Ram & anr. … Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?

For the Appellant :Shri R.M.Bisht, Deputy Advocate General.

For the Respondent(s) :Shri Shrawan Dogra, Advocate.

Deepak Gupta, J. (Oral).

This appeal is directed against the judgment of the learned Judicial Magistrate Ist Class, Chopal dated 1.10.1999 in Case No.192-1 of 95/91-2 of 95 whereby he has acquitted the accused of having committed offences under Section 379 read with 34 IPC.

The prosecution case in brief is that 36 scants of deodar wood were illegally cut in the jungle. Forest Guard Sukh Ram had handed-over the same to complainant Dhani Ram on Sapurdari on 7.1.1995 vide damage report No.8/103. According to Dhani Ram on 5.5.1995 Relue Ram and Laiq Ram stole the wood from the possession of complainant Dhani Ram and used these 36 scants in the construction of their house. On the basis of this complaint FIR No.52/95 was registered against the accused on 6.5.1995. Police conducted the investigation and during the course of investigation visited the house

of the accused and took photographs of the house under construction in which the accused had allegedly utilized the stolen wood. Challan was put up in Court. Charges were framed against the accused. They pleaded not guilty and claimed trial.

There is no witness who has seen the accused stealing the timber. The only deposition in this behalf is of PW2 Dhani Ram. PW2 also admits that he had not seen the accused dishonestly removing the timber. He also could not state on which date the timber was stolen. Surprisingly, though Dhani Ram was the Sapurdar in whose custody timber had been kept but he did not whisper a word as to what steps he had taken to ensure the protection of the timber.

There is no evidence worth the name to show that the accused had stolen the timber. There is no evidence to link the timber used in the construction of the house with the timber which was given on Sapurdari to Dhani Ram. The disclosure statements relied upon by the police have not been proved. PW8 Ganga Ram has not stated that Relue Ram had made disclosure statement in his presence. Other witness Sant Ram has not even stated a single word about the disclosure statement Exl.PW7/C in Court. The recovery of any timber has not been proved on record.

Since nobody had seen the accused stealing the timber, it was for the prosecution to prove the recovery of the timber and also to prove that the timber which was recovered or used by the accused in the construction of their house was the same which was handed over on Sapurdari to Dhani Ram. Both these facts have not been proved.

Keeping in view the aforesaid discussion, I am of the considered view that the learned trial Court has rightly acquitted the accused.

The judgment calls for no interference. The appeal is accordingly dismissed. Bail bonds furnished by the accused/respondents shall stand discharged.

October 5, 2007. (Deepak Gupta), J.

s.